

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0426
Adjusted Gross Income Tax
For The Tax Year 2005**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Adjusted Gross Income Tax – Imposition

Authority: 18 U.S.C.S. § 8; 31 U.S.C.S. § 3124(a); IC § 6-3-2-1(a); IC § 6-8.1-5-1(b); *Economy Plumbing and Heating Co. v. United States*, 470 F.2d 585 (Ct. Cl. 1972) (quoting *Long v. Rasmussen*, 281 F. 236, 238 (D.Mont. 1922)); *Provenza v. Comptroller of Treasury*, 497 A.2d 831 (Md. Ct. Spec. App. 1985).

The Individual protests the imposition of adjusted gross income tax.

STATEMENT OF FACTS

The individual protesting the assessment of taxes ("Individual") filed an Indiana Adjusted Gross Income Tax form for the tax year 2005 stating that he had no taxable income and requesting a refund of the withholding taxes that had been remitted on his behalf by his employer. The Indiana Department of Revenue ("Department") issued the refund. Later the Department determined that adjusted gross income tax was properly due, and issued the Individual an assessment of taxes due for the tax year 2005 plus interest and penalty. The Individual protested this assessment. A hearing was held and this Letter of Findings results. The Individual protested the imposition of adjusted gross income taxes for the years 1997-2002. The Department held a hearing on that protest and issued Letter of Findings 01-20030189 denying the protest in its entirety on July 10, 2003. That protest included much of the same language and reasoning as the current protest. This Letter of Findings incorporates by reference all the language and reasoning of LOF 01-20030189.

I. Adjusted Gross Income Tax – Imposition

DISCUSSION

Tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Individual bears the burden of proving that any assessment is incorrect. *Id.*

Indiana imposes a tax on the adjusted gross income of Indiana residents. IC § 6-3-2-1(a).

The Department assessed adjusted gross income tax on the Individual's wages. The Individual protested this assessment on two additional grounds. First, he stated that he had declared himself a "nontaxpayer" and therefore was not subject to the income tax. Second, he stated that Federal Reserve notes are federal obligations exempt from state income taxation.

The Individual has declared himself a "nontaxpayer" who is not subject to federal or state income taxes. As support for his declaration that he is a "nontaxpayer," the Individual cites from *Economy Plumbing and Heating Co. v. United States*, 470 F.2d 585, 589 (Ct. Cl.1972) (quoting *Long v. Rasmussen*, 281 F. 236, 238 (D.Mont. 1922)) as follows:

They [the revenue laws] relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them [nontaxpayers] Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws.

Taken alone, this cite does seem to suggest that there are two classes of persons: taxpayers and nontaxpayers. However, a reading of the entire case shows that the Taxpayer took this cite out of context. The plaintiffs were partners in a joint venture that had contracted to perform certain construction services for Scott Air Force Base. The federal government withheld a portion of the payment for the construction services and applied that portion to a tax liability of the other partner. The surety for the plaintiffs sought to recover the funds for the plaintiffs. The court determined that the plaintiffs were nontaxpayers because they were attempting to recover funds in a typical civil proceeding resulting from a contractual dispute. Since the plaintiffs were not attempting to recover taxes, they were nontaxpayers as related to this action. They were not covered by the Internal Revenue Code for this action. Nothing in the case suggested that any individual has the authority to classify himself as a "nontaxpayer."

The Individual failed to sustain his burden of proving that he is a "nontaxpayer" who is not subject to the imposition of federal or state individual income taxes.

The Individual also argued that he is not subject to federal or state income tax because he is paid in Federal Reserve Notes.

The Individual points to 31 U.S.C.S. § 3124(a) which states in relevant part:

Stocks and obligations of the United States Government are exempt from taxation by a state or political subdivision of the state. The exemption applies to each form of taxation that would require the obligation, the interest on the obligation, or both to be considered in computing a tax except-

- (1) a nondiscriminatory tax franchise tax or another nonproperty tax instead of a franchise tax, imposed on a corporation; and
- (2) an estate or inheritance tax.

The Individual next cites to 18 U.S.C.S. § 8 which states:

The term “obligation or other security of the United States” includes all bonds, certificates of indebtedness, national bank currency, *Federal Reserve notes*, Federal Reserve bank notes, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, issued under any act of Congress, and canceled United States stamps. (*Emphasis added*).

The Individual read these two statutes together to exempt from state individual income taxes wages received in the form of Federal Reserve Notes. The Individual argued that since he was paid in Federal Reserve Notes and states could not impose income taxes on Federal Reserve Notes, Indiana could not impose adjusted gross income tax on his wages.

The Individual erred in this conclusion. The cited definition of a federal obligation comes from the criminal code. It is not the definition of a federal obligation for tax purposes. 31 U.S.C.S. § 3124 exempts federal obligations from state tax. The term “obligations of the United States” as used in 31 U.S.C.S. § 3124. . . refers to interest bearing obligations such as United States bonds. *Provenza v. Comptroller of Treasury*, 497 A.2d 831, 834 (Md. Ct. Spec. App. 1985). Federal Reserve Notes are not interest bearing obligations. As the court in *Provenza* stated, “If [Individual’s] argument were accepted, it would have the absurd effect of preventing state taxation of any income which may be received in Federal Reserve Notes.” *Provenza* at 834. Therefore, Federal Reserve Notes are not exempted from state income taxation.

The Department properly imposed Indiana Adjusted Gross Income Tax, penalty, and interest for the tax year 2005.

FINDING

The Individual’s protest is respectfully denied.